

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

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██████████
██

Reg No.: 2013-41028
Issue No.: 3003
Case No.: ██████████
Hearing Date: May 13, 2013
Wayne County DHS (35)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Monday, May 13, 2013. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was ██████████.

ISSUE

Whether the Department properly reduced Claimant's food assistance program ("FAP") benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FAP recipient.
2. Claimant's group size is 3.
3. Claimant receives child support for two children in the monthly amount of \$468.86 for each child. (Exhibit 5)
4. Claimant received unemployment compensation of \$223.00 on April 1, 2013 and \$189.00 on March 18, 2013. (Exhibit 6)

5. The Department determined Claimant's unearned income was \$1,415.00.
6. For the period from March 22nd through April 12th, Claimant received gross weekly earnings from employment of \$78.12, \$152.91, \$73.38, and \$234.16. (Exhibit 7)
7. The Department determined Claimant's monthly earnings were \$565.00.
8. As a result, Claimant's FAP allotment was reduced from \$320.00 to \$151.00 effective May 1, 2013. (Exhibits 8, 9, 10)
9. On April 4, 2013, the Department notified Claimant of the reduced FAP benefits amount.
10. On April 12th, the Department received Claimant's timely written request for hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Reference Tables ("RFT").

The Food Assistance Program ("FAP"), formerly known as the Food Stamp program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department, formerly known as the Family Independence Agency, administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3001 through R 400.3015.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (November 2012), pp. 1, 2. All income is converted to a monthly amount. BEM 505 (October 2010), p. 1. For child support, average the past three calendar months, unless changes are expected, when determining the monthly income amount. BEM 505, p. 3. The gross amount of unemployment income is counted as unearned income. BEM 503 (November 2012), p. 26. Income received on a regular schedule but that varies from check to check is considered fluctuating income. BEM 505, p. 1. When the past 30 days is not a good indicator of future income, income from the past 60 to 90 days should be used for fluctuating income. BEM 505, p. 5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 1. Weekly benefit amounts are converted to a monthly amount by multiplying the weekly amount by 4.3. BEM 505, p. 6. Bi-weekly amounts are converted by multiplying the amount by 2.15. BEM 505, p. 6.

In this case, over the last three months, Claimant received child support for each of her two children of \$520.00 in January; \$520.00 in February; and \$366.58 in March. In determining monthly unearned income from this source, the Department properly averaged the 3 month period for a monthly figure of \$468.86 for each child.

Claimant received bi-weekly unemployment compensation in the amount of \$189.00 on March 18th, and \$223.00 on April 1, 2013. The Department determined Claimant's gross monthly income from this source as \$446.00. When converting this amount to a monthly figure, the two amounts should be added together then divided by 2 to get a bi-weekly average figure. This figure (\$206.00) is multiplied by 2.15 for a gross monthly figure of \$442.90, not \$446.00.

The Department determined Claimant's unearned income figure was \$1,415.00. In adding the child support of \$937.72 with Claimant's unemployment compensation of \$442.90, the monthly gross figure is \$1,380.62, not \$1,415.00. As such, the Department's calculation of Claimant's gross unearned income is not correct.

Claimant also receives income from employment. When determining the standard monthly earnings, the Department used Claimant's last 4 paychecks of \$78.12, \$152.91, \$72.38, and \$234.16 for a monthly gross figure of \$565.00. In light of Claimant's fluctuating income, the last 60 to 90 days should have been used for a more accurate figure of Claimant's monthly gross earnings. This was not done. In light of the foregoing, Claimant's gross monthly earned income is not correct.

Ultimately, the Department failed to establish it acted in accordance with policy when it determined Claimant's income. Accordingly, the Department's FAP determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds the Department failed to establish it acted in accordance with department policy when determined Claimant's monthly FAP benefit.

Accordingly, it is ORDERED:

1. The Department's FAP determination is REVERSED.
2. The Department shall initiate recalculation of Claimant's FAP benefits effective May 1, 2013 in accordance with this decision and Department policy.

3. The Department shall notify Claimant of the determination in accordance with Department policy.
4. The Department shall initiate supplementation of FAP benefits that the Claimant was entitled to receive, effective May 1, 2013, if otherwise eligible and qualified in accordance with Department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 30, 2013

Date Mailed: May 30, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/tm

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